IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2155 of 1998
WITH
FIRST APPEALS No. 2158, 2159 & 2161 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
SHANKARBHAI MATHURBHAI PATEL - Defendant(s)

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Appearance :
MR UR BHATT, AGP for Appellant(s) : 1 - 2.
MR NILESH A PANDYA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 19/01/2007

ORAL COMMON JUDGMENT :

Since all these appeals arise from common judgment and award

dated 3/9/1997 made by the 2nd Extra Assistant Judge, Vadodara in Land Reference Case No. 14/1988 and its allied matters, they are heard together and now they are being disposed of by this common judgment.

2. The agricultural lands of the respondents were required for construction of Jambusar Branch Canal of Narmada Project and, therefore, the proceedings under the provisions of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act'] were initiated by the appellant no. 2. Notification under section 4 (1) of the Act was published on 3/11/1982; whereas the declaration under section 6 was made on 15/9/1983. Thereafter, on completion of necessary formalities, appellant no. 2 made award dated 29/6/1985, whereby he determined the compensation at Rs.30,000/- per hectare. The respondents being dissatisfied with the award of appellant no. 2, submitted application for making reference to the Civil Court for enhancement of the compensation. Ultimately the aforesaid reference cases were filed.

2.1. Since all the reference cases were forming subject matter of acquisition under the same notification, the learned Judge consolidated them. On the basis of the material produced before it and in particular the sale instances produced by the respondents, the Ld. Judge held that the

compensation determined by appellant no. 2 was not sufficient and he determined the same at Rs.71,000/- per hectare. Thus, she granted additional compensation of Rs.41,000/- per hectare. Hence these appeals.

3. I have heard Mr. UR Bhatt, Ld. AGP for appellants and Mr. Nilesh Pandya, learned advocate for the respondents. The sole submission advanced by Mr. Bhatt is that the Reference Court committed error in not taking into consideration the sale instances submitted by the appellants. According to him, the Reference Court ought to have determined the market value of the land on the basis of the said documents.

3.1. As against that, Mr. Pandya has submitted that the market value determined by the Reference Court is just and proper and no interference is required by this Court.

4. I have closely perused record of the case and I have also carefully considered the submissions of the learned advocates. The evidence has been recorded in L.R. Case No. 14/1988. Shankarbhai Maturbhai Patel has examined himself at Exh. 21. He is applicant of Land Reference Case No. 14/1988. He has stated that the land in question is situated near Padra Railway Station. This

area is well developed and Padra is having many industries, high schools, railway, colleges, etc. The road running between Vadodara and Jambusar is situated at a distance of a about 2 KMs from the land in question. It is further stated that at the time when the land was acquired, there were residential societies around the land. He has stated that at the relevant time market value of the land was Rs.71,000/- per hectare. He has produced sale-deed dated 24/6/1982 in respect of block no. 436 of survey no. 437/2, which was sold for Rs.71,000/- per hectare. In the cross-examination, he has admitted that acquired land did not fall under the industrial zone and it was agricultural land. He has also stated that it is at the distance of about 5 to 7 KMs from Padra. Shankarbhai Jethabhai Patel is witness no. 2 for the respondents. His evidence is at Exh. 24. He has also referred to the sale instance at Exh. 25 of survey no. 437/2 and has stated that at the relevant time the market value of the land was Rs.71,000/- per hectare. Nothing of any importance from the point of view of appellants has been elicited from the cross-examination.

4.1. Thus, from the aforesaid evidence, it appears that the land is not very far from Padra town. It is having substantial industrial growth, facilities like hospital, school, colleges, etc., in the vicinity. It is also situated near the main road running between Vadodara and Jambusar. It also appears that the

other side i.e., appellants have not given any evidence, but they have placed reliance on two sale instances, which were taken into consideration by appellant no. 2 while determining the market value. They are at Exhs. 29 and 30. The Ld. Judge has considered documents at Exhs. 25, 29 and 30. Exh. 25 is sale instance wherein the land has been sold at Rs.71,000/- per hectare. The other two sale instances at Exhs. 29 and 30 are for lesser price. However, the Ld. Judge has observed that so far as Exhs. 29 and 30 are concerned, they are in respect of a fragment and according to the Ld. Judge only the person having adjoining field would be interested and eligible for purchase of such fragment. Therefore, he would be in a dominating position. In view of the same, according to the Ld. Judge the sale would not reflect the correct market value. The reasoning of the Ld. Judge appears to be well founded. When the buyer is in a dominating position, naturally he will try to derive maximum benefit and in such circumstances, the sale would not reflect the correct market value. In the instant case, the reliable sale instance can be said to be at Exh. 25, which is for Rs.71,000/- and the Ld. Judge has accepted the same to be the correct market value of the land. I do not find any error having been committed by the Ld. Judge on that count. This appears to be a transaction between a willing seller and willing buyer and, therefore, it is bound to reflect correctly the prevailing market value of the land. There is no other reliable evidence than Exh. 25.

Hence, in my opinion, the market value assessed by the Ld. Judge is just and proper and no interference is required by this Court. In short, these appeals have no merits and they are dismissed with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.